

SCOTT HALLABRIN (SBN 076662)
LAWRENCE T. WOODLOCK (SBN 137676)
KOURTNEY VACCARO (SBN 173558)
HEATHER M. ROWAN (SBN 232415)
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814
Telephone: (916) 322-5660
FAX: (916) 327-2026

Attorneys for Defendants

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CAROL MIGDEN, et al.,

Plaintiff,

VS.

**FAIR POLITICAL PRACTICES
COMMISSION, et al.,**

Defendants.

Case No.: CIV. S-08-486-EFB

**ANSWER OF DEFENDANTS
CALIFORNIA FAIR POLITICAL
PRACTICES COMMISSION, ET AL**

The Fair Political Practices Commission (“the FPPC”), together with Ross Johnson, Timothy A. Hodson, A. Eugene Huguenin, Jr., Robert Leidigh, and Ray Remy, each sued in their official capacities as Chairman and Commissioners of the FPPC, hereby answer the Complaint of Plaintiffs Carole Migden, et al.

1. Defendants admit the jurisdictional allegation of Paragraph 1, and further admit that this is an action for declaratory and injunctive relief said to arise under the Constitution of the United States, and that Plaintiffs correctly summarize the allegations of their Complaint. Except as so admitted, Defendants deny the allegations of Paragraph 1.

2. Defendants admit the allegation in Paragraph 2 relating to proper venue per 28 U.S.C. section 1391(b), and that the FPPC maintains its offices and conducts its business in Sacramento, California, and from those offices the Enforcement Division of the FPPC advised Plaintiffs that they may not use specifically identified surplus campaign funds held in a

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1 bank account of the Friends of Carole Migden committee. Except as so admitted, Defendants
2 deny the allegations of Paragraph 2.

3 3. Defendants lack sufficient knowledge or information to form a belief as to
4 the truth of the allegations of the first sentence as to Carole Migden's residency and status as a
5 registered voter of San Francisco, and therefore deny the allegations of the first sentence of
6 Paragraph 3. Defendants admit that Senator Migden's current term of office ends about
7 December 2008, that she is running for re-election to the California State Senate, and that she is
8 seeking the nomination of the Democratic Party in the statewide primary election scheduled for
9 June 3, 2008. Defendants further admit that Senator Migden served on the State Board of
10 Equalization from 2002-2004 and in the State Assembly from 1996-2002.

11 4. Defendants admit that the 2004 Committee is a state candidate controlled
12 political committee that Senator Migden opened in 2000 to support her successful bid for State
13 Senate in 2004, and that this committee received contributions and made expenditures, and that
14 the committee is still open. Defendants lack sufficient knowledge or information to form a
15 belief as to the truth of the remaining allegations of Paragraph 4 and therefore deny those
16 allegations.

17 5. Defendants admit the allegations of the first sentence of Paragraph 5.
18 Defendants lack sufficient knowledge or information to form a belief as to the truth of the
19 allegations of the second sentence, that all contributions for Senator Migden's re-election
20 campaign are made to and from the specified committee, and therefore deny the allegations of
21 the second sentence in Paragraph 5.

22 6. Defendants admit the allegations of Paragraph 6 as contained in the
23 sentences therein, but note that the specified citations do not provide an exhaustive listing of the
24 authorities that allow the FPPC to civilly enforce the PRA against candidates and their campaign
25 committees.

26 7. Defendants admit the allegations of Paragraph 7.

27 8. Defendants admit the allegations of Paragraph 8.

28 9. Defendants admit the allegations of Paragraph 9.

1 10. Defendants admit that throughout calendar year 1996, and from January
2 6, 1998 through December 31, 2000 the PRA did not limit the amount a person could contribute
3 to candidates for state office, and that the voters passed Proposition 34 in November 2000 to,
4 among other things, establish contribution limits for state candidate elections held on or after
5 January 1, 2001. Defendants further admit that the FPPC adopted California Code of
6 Regulations, title 2, section 18530.2(a), which indicated, with some exceptions, that there was
7 no limit on the number of times a candidate for elective state office could transfer campaign
8 funds possessed on January 1, 2001 to his or her campaign committee for an election held after
9 January 1, 2001. Except as so admitted, Defendants deny the allegations of Paragraph 10.

10 11. Defendants admit that California Government Code section 89519
11 governs "surplus campaign funds" - funds that became surplus both before and after the passage
12 of Proposition 34 - and that Plaintiffs accurately quote the statutory language presented in the
13 Complaint. Except as so admitted, Defendants deny the allegations of Paragraph 11.

14 12. Defendants admit the allegations of Paragraph 12.

15 13. Defendants admit the allegations of the first, second, and third sentences
16 of Paragraph 13, that at the end of December 2000 the Assembly Committee had approximately
17 \$900,000 that was raised prior to the January 2001 effective date of Proposition 34 and its
18 contribution limits. Except as so admitted, Defendants deny the allegations in Paragraph 13.

19 14. Defendants lack sufficient knowledge or information to form a belief as to
20 the truth of the allegations of Paragraph 14, and therefore deny the allegations of Paragraph 14.

21 15. Defendants admit that the voters passed Proposition 34 in November of
22 2000. Defendants further admit that in March 2001 a time account was established at Wells
23 Fargo Bank in the name of the Re-Elect Assemblywoman Carole Migden committee and when
24 the time account matured about March 2002, all of its funds were deposited into a checking
25 account established at Wells Fargo Bank in the name of the Re-Elect Assemblywoman Carole
26 Migden committee, and in April 2002 funds from the checking account were deposited into a
27 business money market account established at Sterling Bank & Trust in the name of the Re-
28 Elect Assemblywoman Carole Migden committee. Defendants lack sufficient knowledge or

1 information to form a belief as to the truth of the remaining allegations of Paragraph 15, and
2 therefore deny those allegations.

3 16. Defendants admit that some pre-Proposition 34 funds were transferred
4 into Senator Migden's controlled committee, Friends of Senator Carole Migden, which was
5 formed for her 2004 election to the State Senate. Defendants lack sufficient knowledge or
6 information to form a belief as to the truth of the remaining allegations of Paragraph 16, and
7 therefore deny those allegations.

8 17. Defendants admit that the FPPC staff has taken the position that Plaintiffs
9 cannot lawfully use, including transfer, specifically identified surplus campaign funds held by
10 the Friends of Senator Carole Migden committee and that the FPPC staff informed Plaintiffs of
11 this position in a letter dated October 29, 2007. Defendants lack sufficient knowledge or
12 information to form a belief as to the truth of the remaining allegations of Paragraph 17, and
13 therefore deny those allegations

14 18. Defendants deny the allegations of the fourth sentence (excluding citation
15 sentences) of Paragraph 18 regarding the FPPC's position relating to Senator Migden's use of
16 \$647,000 remaining in her 2004 Committee on her 2008 primary election. Defendants admit the
17 allegations in the remaining sentences of Paragraph 18.

18 19. Defendants lack sufficient knowledge or information to form a belief as to
19 the truth of the allegations of Paragraph 19, and therefore deny the allegations of Paragraph 19.

20 20. Defendants deny each and every allegation of Paragraph 20.

21 21. Defendants deny each and every allegation of Paragraph 21.

22 22. Defendants admit that Plaintiff contends that California Government
23 Code section 89519 is unconstitutional, that Defendants claim that the statute is constitutional,
24 and that an actual case and controversy exists which may be resolved by this court. Except as so
25 admitted, Defendants deny the allegations of Paragraph 22.

26 23. Defendants admit that they plan to enforce California Government Code
27 section 89519 against Plaintiffs, and that there is an actual case and controversy before this
28 Court. Except as so admitted, Defendants deny the allegations of Paragraph 23.

24. Defendants deny each and every allegations of Paragraph 24.

25. Defendants admit that California Government Code section 83120 permits an interested person to seek judicial review of any action by Defendants, and that California Government Code section 83121 requires that the matter be advanced on the docket of the court if it involves a pending election.

26. Defendants admit that Plaintiffs incorporate by reference paragraphs 1 through 25 of the Complaint.

27. Defendants deny each and every allegations of Paragraph 27.

28. Defendants admit that Plaintiffs incorporate by reference paragraphs 1 through 27 of the Complaint.

29. Defendants deny each and every allegations of Paragraph 29.

30. Defendants admit that Plaintiffs incorporate by reference paragraphs 1 through 29 of the Complaint.

31. Defendants admit that their actions to enforce California Government Code section 89519 are taken under color of law. Except as so admitted, Defendants deny the allegations of Paragraph 31.

WHEREFORE, Defendants pray for relief as follows:

1. That Plaintiffs' claims be dismissed;
2. That Defendants recover costs of suit reasonably incurred herein, and;
3. For such other and further relief as the court may deem just and proper.

DATED: March 25, 2008

Respectfully submitted,

SCOTT HALLABRIN
LAWRENCE T. WOODLOCK
KOURTNEY VACCARO
HEATHER M. ROWAN

Attorneys for Defendants

/s/

Lawrence T. Woodlock

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